APPENDIX

MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

This matter coming on to be heard on cross motions for summary judgment, and the material facts not being in dispute, the Court hereby makes the following findings of fact and conclusions of law:

(1) First Federal Savings and Loan Association of Morton Grove, Illinois, was chartered on or about August 1, 1959. In connection with the issuance of the Charter by the Federal Home Loan Bank Board to First Federal Savings and Loan Association of Morton Grove (hereinafter called First Federal), the Federal Home Loan Bank Board prescribed a condition that evidence of a valid pledge of share accounts of the Association, in the amount of $50,000, be made as a guaranty to the Association against operation deficits and losses of any and all kinds which exceed other reserves. This was done pursuant to their power under 12 U.S.C. §1464. Accordingly, an agreement was signed by fourteen depositors of First Federal covering $50,000 which these persons had placed in First Federal. The fourteen depositors signed the document entitled, "Pledge and Escrow Agreement", as individuals, although all of the officers of First Federal were from among the original signatories. Five of these depositors were on the organizing committee to establish the Savings and Loan Association.

(2) These fourteen individuals received no money for signing the agreement, but a Charter for First Federal was issued by the Federal Home Loan Bank Board pursuant to the terms of the agreement.

(3) The fourteen depositors agreed to deliver the shares which they had in First Federal "in escrow to the Federal Home Loan Bank of Chicago, to be held by it as

a pledge and guaranty to First Federal Savings and Loan Association of Morton Grove against operating deficits and losses of any and all kinds which exceed other reserves; this pledge and agreement to remain in full force and effect for a period of five years beginning August 1, 1959."

(4) The agreement contains numerous other provisions which are important to the disposition of this case. One of these provisions gives the Federal Home Loan Bank Board power to make a finding that an impairment in the capital of the Association or a deficit exists after the payment of all expenses by the Association and thereby gives the Board authority to direct the Federal Home Loan Bank of Chicago to deliver the accounts pledged, or any portion thereof, to the Association for cancellation and the simultaneous transfer upon its books of the dollar amount of credits represented by the cancelled accounts to the reserves of the Association for the purpose of absorbing losses or operation deficits.

(5) The agreement also contains a provision regarding the equity of redemption of the depositors, whereby the Association agrees to refund any amounts taken from the accounts from and after August 1, 1964, "whenever possible", provided "that no reserves for losses and surplus would thereby be reduced to less than three per cent of its net assets."

6) In addition, the agreement provides twice, in two separate paragraphs, that:

> This pledge and agreement to remain in full force and effect for a period of five years beginning August 1, 1959, provided that after the expiration of the first three years of the term of this agreement, the release of said pledge and escrow, in whole or in part, may be authorized by the Federal Home Loan Bank Board whenever the net reserves established for the purpose of absorbing losses and surplus of the association together equal at least 3% of its net assets.

(7) On February 15, 1962, depositor Edwin Hancock withdrew his funds and the account of John O. Braeseke was substituted in his place. On December 6, 1963, depositor Tony Marino was substituted under the agreement by an account in the names of Ray Giese, Leroy Gunter and Joseph Reiter. The other depositors maintained their accounts intact, and, taken together, the accounts still amounted to $50,000.

(8) The money deposited pursuant to the Pledge and Escrow Agreement was not transferred initially or at any time thereafter to the Federal Home Loan Bank or to the Federal Home Loan Bank Board. The actual money was kept in the First Federal itself so that it could be used by that institution. This presumably was in accord with the purpose of the agreement.

(9) In 1964, First Federal's problems with management and delinquent loans caused it to submit proposals to the Federal Home Loan Bank Board for solutions to these problems, including proposals arranged by the Association itself for possible mergers. A specific plan of merger to solve First Federal's problems was submitted to the Federal Home Loan Bank Board and disapproved by the Board on June 15, 1964.

(10) Although First Federal did not have the passbooks for the accounts, the Board of Directors resolved at a special meeting to return the money from the accounts of the fourteen depositors. The Board of Directors of First Federal, therefore, resolved that this should be done by disbursing checks covering principal and interest in the amount of $55,557.26 to Joseph Reiter and Leroy Gunter, "as co-trustees for the pledgors". The Board of First Federal directed that these funds be held by the two co-trustees for the pledgors pending final determination of the status of the accounts. The resolution also stated that First Federal was taking this action in view of the rejection by the Federal Home Loan Bank Board of proposals which they felt would have represented a practical and final solution to the Association's problems. Thereafter, on June 18 and June

20, 1964, two checks were issued by First Federal Savings and Loan Association of Morton Grove in the amounts of $50,000 and $5,557.26 in the names of Joseph Reiter and Leroy Gunter as co-trustees. Thereafter, said checks were deposited with the Merchandise National Bank of Chicago in the names of Joseph Reiter and Leroy Gunter as co-trustees. After this suit was filed, the funds were transferred to National Boulevard Bank of Chicago, where they are on deposit at the present time. The $5,557.26 represented interest on the $50,000 and is not in dispute in this action.

(11) On January 4, 1966, the defendant presented an order to this Court by agreement with the plaintiffs, stating in part as follows:

> It is further ordered that plaintiffs be and they are hereby authorized to withdraw the balance of $5,557.26 in that deposit account.

This order constituted a waiver of the defendant's interest in the funds withdrawn to the extent of $5,557.26.

(12) On June 23, 1964, the Federal Home Loan Bank Board, by letter, informed the Federal Home Loan Bank of Chicago that an impairment in the capital of First Federal existed and that the Federal Home Loan Bank should deliver the shares pledged under the agreement to the Association "for cancellation with instructions that the dollar amount of credits represented by such shares be simultaneously transferred upon the Association's books to the reserves of the Association for the purpose of absorbing losses." This was done in accordance with the terms of the Pledge and Escrow Agreement. At the time of this finding by the Federal Home Loan Bank Board, there were losses and deficits in excess of $55,557.26.

(13) On June 27, 1964, a conservator for the Federal Home Loan Bank Board took over the Association pursuant to the provisions of the Home Owners Loan Act of 1933, 12 U.S.C. §1464, et seq. First Federal previously had consented to the appointment of a receiver, whenever in the judgment of the Federal Home Loan Bank

Board such action was deemed necessary, by resolution of June 8, 1964. The Federal Home Loan Bank Board, by meeting of June 15, 1964, had resolved that a conservator be appointed as of the close of business June 27, 1964.

(14) On June 27, 1964, the conservator assumed responsibility for the management of the Association and effected a merger between First Federal and Second Federal Savings and Loan Association of Chicago. Under the Plan of Merger and Merger Agreement, it was provided that First Federal of Morton Grove shall be merged with and become part of Second Federal of Chicago, which shall be the resulting association. The existing Charter of Second Federal is made the Charter of the resulting association. The existing Charter of First Federal is cancelled. It is said that the resulting association shall be deemed to be, and shall be, a continuation of the entity and identity of Second Federal. However, no such provision is found as to First Federal. It is also provided that "all liabilities of First Federal . . . shall be assumed by the resulting association and may be enforced against it to the same extent as if such liabilities had been incurred or contracted by it."

(15) On July 16, 1964, Second Federal gave a written assignment to the defendant of its right, title and interest to the claim of Second Federal against Joseph Reiter and Leroy Guntner, co-trustees, to the $55,557.26. By letter, dated August 3, 1964, defendant paid Second Federal $55,557.26 for this assignment. By letter, dated August 28, 1964, to Joseph Reiter, Leroy Guntner, Luke Meier, John Braeseke and Ray Giese, the defendant demanded the return of the sum of $55,557.26, acting as assignee of Second Federal and basing its claim on the rights of Second Federal acquired from First Federal.

(16) On September 5, 1965, Joseph Reiter and Leroy Guntner filed the present suit, as co-trustees for the fourteen depositors under the Pledge and Escrow Agreement, seeking a declaratory judgment that the defendant has no right, title or interest to the funds in question.

In support of their position, the plaintiffs assert a three-pronged argument. First of all, they argue that the Board of Directors of First Federal had the power and authority to return the funds in question to the plaintiffs and no cause of action arose in favor of either First Federal, the Federal Home Loan Bank Board, or Second Federal, as a result of that action. The plaintiffs argue that although the transfer of the funds may have violated the Escrow Agreement, the only possible legal consequence of this violation was the revocation of First Federal's Charter by the Federal Home Loan Bank Board.

The plaintiffs' second argument is based on the order entered by this Court upon stipulation by the parties. This order is found in my Finding of Fact #11. The position of the plaintiffs is that this waiver of rights to the interest on the pledged fund was an admission that the defendant had no interest in the $50,000.

I find the first of these arguments very persuasive. The second is rather weak. The waiver which was entered on the record by stipulation of the parties was done for the convenience of this litigation, and I do not see how it can be considered an admission by the defendant. I consider it irrelevant to the controversy over the $50,000 and have not considered it in my resolution of the controversy.

My position on the two matters set forth above could be stated with somewhat more detail. However, I will not do that in light of the fact that I find the plaintiffs' third argument clearly dispositive of the case. I am in full agreement with the plaintiffs that the duty of the defendant's assignor, Second Federal, to reimburse the plaintiffs is a complete defense against any rights to the funds that the defendant might have.

As was previously set out in my Findings of Fact, part of the Escrow Agreement provided that after August 1, 1964, any amounts taken from the accounts of the pledgors would be refunded "whenever possible" provided "that no reserves for losses and surplus would there-

by be reduced to less than three per cent of" the Association's net assets. It cannot be contested that this right to reimbursement did not exist at the time that First Federal merged with Second Federal. Also, it must be admitted by the plaintiffs that there was no right to reimbursement when Second Federal assigned their rights, if any, to the $50,000 to Second Federal. However, when Second Federal merged with First Federal, it was agreed that:

> • • • all liabilities of First Federal . . . shall be assumed by the resulting association and may be enforced against it to the same extent as if such liabilities had been incurred or contracted by it.

It may be true that at the date of the merger Second Federal obtained as one of the assets of First Federal the right to proceed against the plaintiffs for the $50,000 which the Board of Directors had ordered paid to them. But, this right was conditioned by the terms of the Escrow under which the right arose. The Escrow Agreement contained the stipulation that the money forfeited, the $50,000 in question, would be reimbursed, "whenever possible", as soon after August 1, 1964, as the Association had sufficient assets, so that its reserves for losses and surplus would not be reduced by the payment below per cent of its assets. One cannot look upon the merger agreement as providing anything other than that the above-described proviso of the Escrow Agreement was one of the liabilities which Second Federal assumed.

Accordingly, as the assignee of Second Federal's claim to the $50,000 in this suit, the defendant's rights to the money are limited by the plaintiffs' right to reimbursement. This right to reimbursement matured on August 1, 1964, at which time the financial position of Second Federal was such that they were obliged to pay back to the plaintiffs any money which they may have forfeited. Consequently, if I were to hold that the First Federal had a right to the money which was paid to the plaintiffs, and that this right was transferred to Second Federal under the merger agreement, I would

likewise be obliged to find that the right to reimbursement which matured on August 1, 1964, existed at the time of the merger and stood as an absolute defense to any action by Second Federal, or by their assignee, the defendant, to obtain possession of the funds in question in this suit. The defendant here is an assignee and stands in the shoes of its assignor. As such, any defense by plaintiffs against the assignor is valid as against the assignee.

Since I am convinced that the plaintiffs have an irrefutable defense to any action by the defendant to the money in question, I find that the plaintiffs' motion for summary judgment must be and hereby is granted. The defendant's motion is denied. I declare that the defendant has no claim to the funds held by the plaintiffs as trustees because of an absolute defense which exists in favor of the plaintiffs.

Enter:

James B. Parsons
United States District Judge

Date: June 29, 1967

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1967 — APRIL SESSION, 1968

No. 16485

JOSEPH REITER and LEROY GUNTNER,
Plaintiffs-Appellees,
v.
FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUNE 7, 1968

Before KNOCH, *Senior Circuit Judge,* and SWYGERT and CUMMINGS, *Circuit Judges.*

CUMMINGS, *Circuit Judge.* Plaintiffs sued for a declaratory judgment that the Federal Savings and Loan Insurance Corporation ("Insurance Corporation") has no title to a $50,000 account on deposit in the National Boulevard Bank of Chicago.[1] The Insurance Corporation is a corporate instrumentality and agency of the United States, organized under Subchapter IV of the National Housing Act (12 U.S.C. § 1725 *et seq.*).

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[1] This $50,000 account had been augmented by $5,557.26 in dividends or interest, but only the ownership of the $50,000 originally pledged by the plaintiffs and their associates is at issue.

Plaintiffs were the president and secretary of the First Federal Savings and Loan Association of Morton Grove, Illinois ("First Federal"), which was chartered on August 1, 1959, by the Federal Home Loan Bank ("Loan Bank"), which is an agency of the United States charged with the responsibility of chartering, regulating and insuring federal savings and loan associations. It manages and supervises the Insurance Corporation. As a condition for the issuance of First Federal's charter and for the insurance of its accounts by the Insurance Corporation, the Loan Bank exacted a pledge of First Federal savings share accounts in the sum of $50,000 as a guarantee by the pledgors to First Federal against losses. Accordingly, 12 share accounts were pledged to the Federal Home Loan Bank in Chicago. Eight of these accounts were of organizers, directors and officers of First Federal. Plaintiffs were among the pledgors and are suing for themselves and the other remaining pledgors.

In September 1960, the pledgors executed a Pledge and Escrow Agreement effective August 1, 1959, the date of the issuance of First Federal's charter. The pledgors assigned and delivered their $50,000 First Federal shares in escrow to the Federal Home Loan Bank of Chicago for five years. In pertinent part the Merger and Escrow Agreement provided that whenever the Loan Bank should find any impairment in First Federal's capital, it would direct the Federal Home Loan Bank of Chicago to deliver the pledged shares to First Federal for cancellation and transfer upon its books of the dollar amount of credits represented by the cancelled shares to the reserves of First Federal for the purpose of absorbing its losses or operating deficits. The Pledge and Escrow Agreement contained the following refund clause upon which plaintiffs rely:

> "If during the life of this agreement there shall have been any charges against the share accounts herein pledged, the said association shall, whenever possible after the termination of this agreement, refund such amounts on a pro rata basis to the pledgors; provided, however, that no refund to any

pledgor shall exceed the amount such pledgor has been required to forfeit by reason of the terms of this agreement; and provided, further, that no such refund shall be made when the said association's net reserves for losses and surplus would thereby be reduced to less than 3% of its net assets."

The Pledge and Escrow Agreement also provided that the pledged shares were to be delivered by the Federal Home Loan Bank of Chicago to First Federal for like cancellation and transfer in the event of First Federal's liquidation.

In May 1964, plaintiffs and other directors of First Federal advised the Federal Home Loan Bank of Chicago as follows:

"The audit of the Association reveals that the Association will be minus $47,000.00 in meeting its June 30, 1964 dividend of 4¼%. The survey of delinquencies reveals a potential loss of $174,000.00 upon bad loans (see attached). Reserves at present are at $72,000.00."

On June 8, 1964, the First Federal directors adopted a resolution consenting to the appointment of a conservator.

On June 15th, the Loan Bank rejected alternative proposals submitted by First Federal with respect to its future operations and appointed Clarence M. Christie as its conservator, effective June 27, 1964, on grounds of its insolvency, violation of law or regulation, and unsafe or unsound operation.

On June 18th, First Federal's directors adopted another resolution, acknowledging that the Loan Bank had expressed its intention to levy against the $50,000 pledged saving share accounts and authorizing plaintiffs to withdraw $50,000 as co-trustees for the pledgors, to hold said amount in escrow "pending final determination of the status of the accounts." On the same date, plaintiff Reiter drew a First Federal $50,000 check payable from the general funds of the Association on deposit at the LaSalle National Bank of Chicago, payable to the plaintiffs as

co-trustees. The proceeds of the check were ultimately deposited in their trust account at the National Boulevard Bank of Chicago. No charge was made against the individual pledged share accounts; no change was made in the ledger accounts or cards representing those accounts; and the passbooks remained in the possession of the Federal Home Loan Bank of Chicago. The $50,000 trust account was shown on First Federal's books as an asset under "Accounts Receivable" and later under "Account in Escrow."

On June 23, 1964, the Loan Bank wrote the Federal Home Loan Bank in Chicago that there was an impairment in the capital of First Federal. Accordingly, the Federal Home Loan Bank of Chicago was directed to deliver the $50,000 pledged share accounts to First Federal for cancellation, with instructions that the dollar amount of the credits represented by the pledged shares be transferred upon First Federal's books to its reserves for the purpose of absorbing losses. The conservator took charge of First Federal on June 27, 1964, and thereupon carried out the cancellation and transfer instructions. After reflecting the $50,000 charge in the pledged passbooks, he returned them to the pledgors on the same date.

Also on June 27, the conservator entered into a Sale and Purchase Agreement with the Insurance Corporation. In order to prevent a default by First Federal, the Insurance Corporation agreed to purchase certain First Federal assets, thus facilitating a merger between First Federal and the successful Second Federal Savings and Loan Association of Chicago ("Second Federal"). Pursuant to this agreement, the Insurance Corporation paid $2,800,000 for various distressed and doubtful assets of First Federal and assumed all its undisclosed liabilities. The agreement was to terminate unless First Federal and Second Federal should merge within 30 days therefrom.

Again on June 27, First Federal's conservator entered into a Plan of Merger and Merger Agreement with

Second Federal, which was to become the resulting association. Second Federal's charter was made the charter of the resulting association, and First Federal's charter was surrendered for cancellation. The Merger Agreement provided that the resulting association was to be a continuation of Second Federal. All First Federal's assets, including those arising under the Sale and Purchase Agreement between First Federal and the Insurance Corporation, were vested in Second Federal, and all First Federal's saving share accounts were transferred to Second Federal. The Merger Agreement also provided that the resulting association would assume all liabilities of First Federal.

On June 16, 1964, Second Federal assigned to the Insurance Corporation all of Second Federal's rights in the $50,000 in dispute. In return, the Insurance Corporation paid Second Federal $50,000.

A payment of $50,000, the amount of the pledged share accounts, by Second Federal to plaintiffs would not reduce its net reserves to less than 3% of its net assets, and the District Court held that under the above-quoted refund clause of the Pledge and Escrow Agreement, Second Federal was obligated to refund that amount to plaintiffs. The Court held that this obligation passed to the Insurance Corporation and that it was accordingly without any interest in the $50,000 on deposit at the National Boulevard Bank of Chicago. Summary judgment was entered for plaintiffs.

By way of dictum, the District Court found "very persuasive" an argument of the plaintiffs that although the June 1964 transfer of these funds to them may have violated the Pledge and Escrow Agreement, the only legal consequence would be the revocation of First Federal's charter. However, the summary judgment for plaintiffs was entered on an alternative ground. Thus the Court held the aforesaid refund clause of the Pledge and Escrow Agreement was applicable, stating "I am in full agreement with the plaintiffs that the duty of the defendant's assignor, Second Federal, to reimburse the

plaintiff [under that clause] is a complete defense against any rights to the funds that the defendant might have."

We cannot agree with either ground and therefore reverse.

On June 8, 1964, First Federal's directors consented to the appointment of a conservator. Ten days later, knowing of First Federal's desperate position, five of its directors, having previously pledged their First Federal share accounts to the Federal Home Loan Bank of Chicago, voted to disburse the funds represented by all the pledged accounts to plaintiffs as co-trustees. On the same day, plaintiffs withdrew $50,000 from the First Federal's general checking account at the LaSalle National Bank and deposited it in another bank, and later at the National Boulevard Bank of Chicago. Plaintiffs were of course not entitled to withdraw general funds of First Federal for their own benefit. No change was made in the First Federal's ledger account or cards representing the pledged share accounts, the passbooks remained in the hands of the Federal Home Loan Bank of Chicago, and First Federal continued to show the withdrawn sum as an asset. Therefore it would appear that the withdrawal was from its general funds.[2] First Federal had the right to those funds. This right passed to Second Federal under the Merger Agreement and in turn to the Insurance Corporation by assignment. Therefore, plaintiffs have no interest in the funds unless they acquired a right of reimbursement under the refund clause of the Pledge and Escrow Agreement.

Under the impairment in capital clause in the Pledge and Escrow Agreement, the Loan Bank directed the

[2] If the withdrawal was from the pledged share accounts as plaintiffs contend, it was still illegal, for only the Loan Bank could release these accounts from the terms of the Pledge and Escrow Agreement, and it did not do so. Instead, the Loan Bank caused this amount to be transferred to First Federal's reserves. This asset passed to Second Federal upon the merger with First Federal and was later assigned to Insurance Corporation.

pledgee Federal Home Loan Bank of Chicago to deliver the pledged shares to First Federal for cancellation, with the amount of credits represented by these shares transferred to reserves on First Federal books. This was done by First Federal's conservator on June 27, 1964, when he charged the pledged accounts in the amounts pledged, thereafter returning the passbooks to the pledgors.

The refund clause in question required First Federal to refund the pledged amounts to the pledgors "whenever possible" after the August 1, 1964, termination of the Pledge and Escrow Agreement, provided that no refund should be made when First Federal's net reserves would be reduced to less than 3% of its net assets.

Concededly, the refund of these pledged accounts would have reduced First Federal's net reserves to less than 3% of its net assets. If First Federal's operations eventually had resulted in the accumulation of adequate reserves, the refund clause would clearly have applied to plaintiffs and the other pledgors. But it is plain that the refund clause was conditioned on First Federal's acquisition by its own devices of adequate capital reserves and not to this situation where the Insurance Corporation had to purchase $2,800,000 of doubtful assets of First Federal and to assume all its undisclosed liabilities. It was only this intervention of the Insurance Corporation that made possible the "merger" of First Federal into Second Federal. Under the Merger Agreement the new association was expressly "a continuation of the entity and identity of Second Federal" and the charter of First Federal was cancelled. There was no longer a First Federal as contemplated by the refund clause in question. In our view, the refund clause was not meant to apply after the failure of First Federal but required the continuation of business on its part. Cf. *International Co. of St. Louis* v. *Sloan*, 114 F.2d 326, 329 (10th Cir. 1940, certiorari denied, 311 U.S. 702). It is true that under the Merger Agreement Second Federal assumed the pre-existing liabilities of First Federal. However, First Federal

was not under any obligation to refund the $50,000, for its reserves would thereby have been reduced to less than 3% of its net assets. Consequently, Second Federal's assumption of First Federal's liabilities did not require Second Federal to refund the $50,000 to plaintiffs and the other pledgors.

Looking at substance, First Federal had failed and was in effect liquidated. Plaintiffs can point to no clause in the Pledge and Escrow Agreement that would entitle them to a refund in the event of liquidation.[3] The refund clause in question would not apply by its very terms, for First Federal was no longer *in esse* in any form.

Our conclusion that the refund clause is inapplicable is consistent with the purpose of the Pledge and Escrow Agreement. To induce the insuring of First Federal's accounts and the issuance of a charter, these pledges were required to provide a cushion against First Federal's failure and to encourage First Federal's organizers to work for its success. As a result of that failure, defendant was forced to advance $2,800,000 to persuade Second Federal to take over First Federal's insured deposit share accounts. Even the small cushion provided by the pledges would be lost if the refund clause were held to apply. Of course, the additional purpose of the cushion to encourage the best efforts of First Federal's organizers was inapplicable after Second Federal took over.

In sum, we hold only that the refund clause does not cover the circumstances of this case. Mergers are not mentioned in the Pledge and Escrow Agreement, and we

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[3] Defendant did not urge below that First Federal had been liquidated. Nevertheless, it did assert that the refund clause was only operative if First Federal remained in existence and improved its financial position. There is no need to remand for consideration of the liquidation point, for this Court can appropriately construe the Pledge and Escrow Agreement. *United States* v. *General Motors*, 384 U.S. 127, 141, note 16; *Best Medium Co.* v. *National Insider, Inc.*, 385 F.2d 384, 386 (7th Cir. 1967).

need express no opinion whether the refund clause would apply to mergers of viable associations.

Plaintiffs finally argue that their pledges were invalid as beyond the authority of the Loan Bank, Section 1726(b) of the National Housing Act (12 U.S.C. § 1726 (b)) requires insured institutions to provide adequate reserves. Consistently therewith, the regulations, which are a permissible exercise of the power conferred on the Loan Bank by Section 5(a) of the Home Owners' Loan Act (12 U.S.C. § 1464(a)), permit the Loan Bank to prescribe whatever "requirements as it deems necessary or desirable" (12 C.F.R. § 543.2(d)). These provisions empowered the Loan Bank to exact the $50,000 pledged as a guaranty against losses. The fact that insured share accounts were pledged does not bar defendant's claim. A pledgor cannot recover insurance on an insured item forfeited under the provisions of a consensual pledge. Other points raisesd by plaintiffs have been considered but are not persuasive.

The judgment is reversed, with direction to award defendant the deposit in controversy.

A true Copy:

Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit.

JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT (ENTERED: June 7, 1968)

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, and that this cause be, and it is hereby Remanded to the said District Court with direction to award defendant the deposit in controversy, in accordance with the opinion of this Court filed this day.

ORDER DENYING PETITION FOR REHEARING (ENTERED: July 2, 1968)

It Is Ordered by the Court that the petition for rehearing filed in the above entitled cause be and the same is hereby denied.

STATUTES AND REGULATION

12 U.S.C. § 1464

(a) In order to provide local mutual thrift institutions in which people may invest their funds and in order to provide for the financing of homes, the Board is authorized, under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as "Federal Savings and Loan Associations," and to issue charters therefor, giving primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States.

12 U.S.C. § 1726

(a) It shall be the duty of the Corporation to insure the accounts of all Federal savings and loan associations, and it may insure the accounts of building and loan, savings and loan, and homestead associations and cooperative banks organized and operated according to the laws of the State, District, Territory, or possession in which they are chartered or organized.

12 U.S.C. § 1728

(b) In the event of a default by any insured institution, payment of each insured account in such insured institution which is surrendered and transferred to the Corporation shall be made by the Corporation as soon as possible either (1) by cash or

(2) by making available to each insured member a transferred account in a new insured institution in the same community or in another insured institution in an amount equal to the insured account of such insured member: *Provided,* That the Corporation, in its discretion, may require proof of claims to be filed before paying the insured accounts, and that in any case where the Corporation is not satisfied as to the validity of a claim for an insured account, it may require the final determination of a court of competent jurisdiction before paying such claim.

12 C.F.R. § 543.2(d)

"If the Board approves the application it will establish, as conditions to be met prior to the issuance of a charter, requirements as to (1) minimum number of subscribers to the association's capital; (2) minimum amount of capital to be paid into the association's savings accounts upon issuance of a charter to it; (3) guarantee by the organizers or others of the association's organization and operating expenses; and (4) such other requirements as it deems necessary or desirable. (12 CFR § 543.2(d) Rules and Regulations of the Federal Savings and Loan System.